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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DOROTHEY HEIMBACH,
individually and as successor in
interest to Anthony Silva,

Plaintiff,

v.

STANISLAUS COUNTY; and
JUSTIN CAMARA, ZA XIONG,
and ERIC BAVARO, in their
individual capacities,

Defendants.

Case No. 2:23-cv-01887-DJC-CSK

**PLAINTIFF'S OPPOSITION TO
MOTION FOR ADMINISTRATIVE
RELIEF**

**TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD
HEREIN:**

Plaintiff opposes Defendants’ Motion for Administrative Relief to allow untimely rebuttal expert disclosures and to extend the expert discovery deadline. Defendants fail to demonstrate “good cause” as required under Federal Rule of Civil Procedure 16(b)(4), and the motion should be denied.

As the Ninth Circuit made clear in *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992), “[t]he district court may modify the pretrial schedule ‘if it cannot reasonably be met despite the diligence of the party seeking the extension.’” The focus of the “good cause” inquiry is on the diligence of the moving party. “If that party was not diligent, the inquiry should end.” *Id.*

Here, Defendants concede the delay was caused by internal miscommunication and a breakdown in their own administrative process. This is the very type of “carelessness” that the Ninth Circuit has found “is not compatible with a finding of diligence and offers no reason for a grant of relief.” *Id.* at 609–10; *see also Engleson v. Burlington Northern R.R. Co.*, 972 F.2d 1038, 1043 (9th Cir.1992) (carelessness not a ground for relief under Rule 60(b)); *Martella v. Marine Cooks & Stewards Union*, 448 F.2d 729, 730 (9th Cir.1971) (same), cert. denied, 405 U.S. 974, 92 S.Ct. 1191, 31 L.Ed.2d 248 (1972); *Smith v. Stone*, 308 F.2d 15, 18 (9th Cir.1962) (same).

Defendants had clear advance notice of the rebuttal disclosure deadline and failed to meet it due to a preventable oversight. Such conduct does not establish diligence under *Johnson*.

Moreover, Defendants seek to shift the burden of their own error onto Plaintiff by asking the Court to retroactively excuse a violation of the scheduling order. But “[t]he burden was upon [Defendants] to prosecute [their] case properly.” *Id.* at 610. Plaintiff timely objected and should not be penalized by a late disclosure, especially where no showing has been made that the expert was previously unavailable or that

1 disclosure could not reasonably have occurred on time.

2 Because Defendants have not shown that the scheduling deadline could not
3 “reasonably be met despite the diligence” of counsel, the Court should deny the
4 motion.

5 DATED: April 3, 2025

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7 By: /s/ Cooper Alison-Mayne

8 Dale K. Galipo

9 Cooper Alison-Mayne

Attorneys for Plaintiff